

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TOBY J. MASSE,

Plaintiff,

v.

JEFFREY UTTECHT, et al.,

Defendants.

No. CV-10-5005-LRS

**ORDER GRANTING
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

On January 4, 2011, Defendants filed a Motion For Summary Judgment (Ct. Rec. 24). The *pro se* Plaintiff has not filed a response to the motion. A response was due no later than 30 days after service of the motion. LR 7.1(c)(1) There is no stipulation or order of record extending the response time. Defendants noted their motion for hearing on February 23, 2011, without oral argument.

A failure to timely file a memorandum of points and authorities in opposition to any motion may be considered by the court as consent on the part of the party failing to file such memorandum to the entry of an order adverse to the party in default. LR 7.1(e). Furthermore, pursuant to LR 56.1(d), in determining any motion for summary judgment, the court may assume the facts claimed by the moving party are admitted to exist except as and to the extent such facts are controverted by a statement of material facts filed by the non-moving party. Plaintiffs, the non-moving parties, have not filed a statement of material facts.

1 Based on LR 7.1(e) and the uncontroverted statement of material facts (Ct.
2 Rec. 27)¹ and memorandum of points and authorities (Ct. Rec. 26) filed by the
3 Defendants, said Defendants' Motion For Summary Judgment (Ct. Rec. 24) is
4 **GRANTED**. The undisputed facts establish as a matter of law that none of the
5 Defendants retaliated against the Plaintiff in violation of his First Amendment
6 rights, or deprived him of procedural due process in violation of his Fourteenth
7 Amendment rights. All of the Defendants are awarded judgment on all of the
8 claims asserted against them in Plaintiffs' Complaint.

9 **IT IS SO ORDERED.** The District Executive is directed to enter judgment
10 accordingly and forward copies of the same to Plaintiff and to counsel for
11 Defendants. Any appeal taken from this judgment and order is not in good faith.
12 28 U.S.C. §1915(a)(3). This file shall be closed.

13 **DATED** this 8th of March, 2011.

14 *s/Lonny R. Suko*

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LONNY R. SUKO
16 United States District Judge

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¹ As supported by numerous declarations (Ct. Rec. 28-38) and exhibits
28 attached thereto.